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37 CFR 41.37 SECOND REPLY APPEAL BRIEF

Sir:

In response to the office action mailed November 2, 2005, which was in response to the 37 CFR § 41.37 Appeal Brief filed on July 25, 2005, the applicant requests that the appeal be reinstated and files this second reply brief.

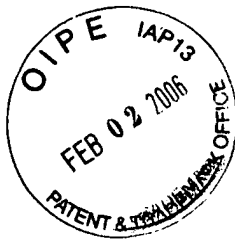
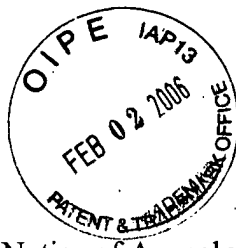


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I. **37 CFR 41.37 (a)(1) and (2)**

This brief is filed with a third Notice of Appeal under Section 41.31. Since all fees for the appeal have previously been paid, no fees are due, and therefore no fee accompanies this brief.

II. **37 CFR 41.37 (b)**

The filing is timely. Accordingly, this subsection is not relevant.

III. **37 CFR 41.37 (c)(1)**

A. **37 CFR 41.37 (c)(1)(i) Real Party in Interest**

The real party in interest is Catalina Marketing International, Inc., a Delaware corporation, which is wholly owned by Catalina Marketing Corporation, a Delaware corporation.

B. **37 CFR 41.37 (c)(1)(ii) Related Appeals and Interferences**

There are no related appeals and interferences. Accordingly, this subsection is not relevant.

C. **37 CFR 41.37 (c)(1)(iii) Status of Claims**

Claims 1-33 are pending, rejected, and under appeal.

D. **37 CFR 41.37 (c)(1)(iv) Status of Amendments**

All amendments are entered.

E. **37 CFR 41.37 (c)(1)(v) Summary of the Claimed Subject Matter**

The claim defines systems and methods of real-time notification to company employees of customer complaints, to allow customer to provide verbal feedback in response to customer survey questions and to make the existence of this verbal feedback immediately identified to company employees, and to allow company employees to easily track the occurrence and resolution of customer complaints through a web-based system.

Claim 1 defines an electronic network implemented method for notifying personnel of

customer feedback messages (page 1 lines 10-12), comprising: receiving from a customer a customer feedback message in an electronic format (page 3 lines 9-11); automatically storing said feedback message from said customer in a database in response to receipt of said customer feedback message in said electronic format (page 3 lines 20-21); and automatically creating and transmitting an electronic notification message to a first employee of an employer, said electronic notification message providing an indication that a feedback message exists, said automatically creating and transmitting occurring in response to at least one of said receiving and said automatically storing (page 3 lines 11-14; page 5 lines 19-20).

Claim 8 defines an electronic network implemented method for notifying personnel of customer feedback messages (page 1 lines 10-12), comprising: receiving a spoken customer feedback message from a customer (page 3 lines 15-19); creating an audio file containing a recording of said spoken customer feedback message (page 6 lines 18-20); storing said audio file in a database (page 3 lines 20-21); generating an electronic notification message, said electronic notification message indicating that a certain feedback message has been received (page 3 lines 9-14; page 5 lines 19-20); transmitting said electronic notification message to an employee of an employer (page 6 lines 18-20); and accessing said database and playing said audio file containing a recording of said spoken feedback message stored in said database to said employee, upon receiving a command from said employee (page 6 lines 18-20).

Claim 15 defines an electronic network implemented method for notifying personnel of customer messages (page 1 lines 10-12), comprising: receiving a satisfaction rating from a customer; receiving a spoken message from said customer (Figure 3; page 8 lines 8-11); creating an audio file containing a recording of said spoken message (page 6 lines 18-20); storing said audio file in a database (page 3 lines 20-21); generating an electronic notification message, said electronic notification message indicating at least the existence of a satisfaction rating of a customer, said generating occurring automatically at least in part in response the receipt and storage of at least one of said satisfaction rating and said spoken message (page 3 lines 9-14; . page 5 lines 19-20); attaching said audio file to said notification message (page 3 lines 18-19); automatically transmitting said electronic notification message to an employee of an employer, said automatically transmitting occurring at least in part in response to said generating (page 6

lines 18-20); determining whether said satisfaction rating is below a threshold value (page 9 lines 7-9); and transmitting a second electronic notification message to a second employee of said employer if said satisfaction rating is below said threshold value, said second electronic notification message indicating at least the existence of a satisfaction rating of a customer (Figure 4; page 8 line 17; page 10 lines 21-23; page 15 lines 13-20).

Claim 17 defines a customer feedback notification electronic system, comprising: a database for storing a customer feedback message of a customer (page 3 lines 20-21); an electronic notification message, said electronic notification message indicating that a customer feedback message has been received (page 3 lines 9-11); and a computer server for promptly transmitting said electronic notification message to an employee of an employer upon receipt of said customer feedback message (Figure 1; page 7 line 21 to page 8 line 1).

Claim 20 defines a customer feedback notification electronic system, comprising: a voice server for receiving a spoken customer feedback message (Figure 1; page 7 lines 8-15); a database for storing said feedback message in an audio file (page 3 lines 20-21); an electronic notification message indicating that said feedback message has been received, said electronic notification message including said audio file (page 11 lines 14-16); and a computer server for promptly transmitting said notification message to an employee in response to receipt of said customer feedback message (Figure 1; page 7 line 21 to page 8 line 1).

Claim 22 defines an electronic network implemented method for receiving and tracking customer feedback messages, comprising: receiving a customer feedback message of a customer (page 3 lines 15-19); storing said customer feedback message in a database (page 3 lines 20-21); creating an electronic notification message indicating that a customer feedback message has been received from an individual customer (page 3 lines 11-14; page 5 lines 19-20); promptly transmitting said notification message to an employee of an employer upon receipt of said customer feedback message (page 6 lines 18-20); accessing said database using a web server to retrieve said customer feedback message to a web browser (page 12 lines 20-22); and displaying to said employee said customer feedback message within a web page displayed by said web browser (page 12 line 22 to page 13 line 3).

Claim 28 defines a system for receiving and tracking customer complaints, comprising: a

voice server for receiving a customer complaint (Figure 1; page 7 lines 8-15); a database for storing said complaint in a complaint record (page 3 lines 20-21); a message server for serving an electronic notification message indicating that a complaint has been received, said message server configured to automatically serve said electronic notification message to an employee of an employer promptly upon receipt of said customer complaint (Figure 1; page 7 line 21 to page 8 line 1); a web server connected with said database, said web server configured to enable said employee to access said database to retrieve said complaint record (Figure 1; page 12 lines 20-22).

Claim 33 defines a computer program product comprising a computer readable media storing code for enabling an electronic network to implement a method for notifying personnel of customer feedback messages, said method comprising: receiving from a customer a customer feedback message in an electronic format (page 3 lines 9-11); automatically storing said feedback message from said customer in a database in response to receipt of said customer feedback message in said electronic format (page 3 lines 20-21); and automatically creating and transmitting an electronic notification message to a first employee of an employer, said electronic notification message providing an indication that a feedback message exists, said automatically creating and transmitting occurring in response to at least one of said receiving and said automatically storing (page 3 lines 11-14; page 5 lines 19-20).

F. 37 CFR 41.37 (c)(1)(vi) Grounds of Rejection to be Reviewed on Appeal

The applicant requests review of all grounds for rejection in the new office action mailed November 2, 2005. These grounds are whether the rejections of claims 1-4, 7-11, 14, 15-18 and 33 under 35 USC 102(e) as being anticipated by Bayer et al. (US 2002/0103693), hereinafter "Bayer" and the rejections of claims 5, 6, 8-16, 19-32 under 35 U.S.C. 103(a) as being unpatentable over Bayer as applied to claims 3 and 17, should be reversed.

G. 37 CFR 41.37 (c)(1)(vii) Argument

1. Summary of Argument

The present invention relates to an electronic system and method for notifying companies

and retailers of customer complaints or dissatisfaction responses to survey questions and monitoring the resolution of these responses. For example, claim 1 recites:

An electronic network implemented method for notifying personnel of customer feedback messages, comprising:

receiving from a customer a customer feedback message in an electronic format;

automatically storing said feedback message from said customer in a database in response to receipt of said customer feedback message in said electronic format;

and

automatically creating and transmitting an electronic notification message to a first employee of an employer, said electronic notification message providing an indication that a feedback message exists, said automatically creating and transmitting occurring in response to at least one of said receiving and said automatically storing.

Bayer does not teach or suggest the last step of claim 1, that is, automatically creating the notification of the existence of a feedback message and transmitting the notification to an employee.

2. What Bayer Teaches

Bayer is directed to a system for aggregating and analyzing customer feedback regarding a travel service provider. If the feedback indicates a significant or recurring issue, Bayer discloses transmitting the feedback message to the involved service provider. See the abstract and paragraphs 9 and 10.

More specifically, Bayer discloses that customer service controller 102 receives feedback information at 710 and stores it in feedback database 600 and analyzes the information. Bayer also teaches that the analysis determines the “severity” of the complaint to determine if a

response is necessary. Bayer paragraphs 68 and 69. If the analysis indicates that the complaint is not sufficiently severe to warrant contacting the service provider, Bayer teaches that a message is electronically sent to the customer at 808. If the complaint is sufficiently severe, the information is sent to the service provider. Bayer paragraph 72.

Bayer also discloses reports of aggregated feedback to be forwarded to a representative of a service provider. Bayer paragraph 76. Bayer discloses receiving customer feedback and determining the severity or nature of the customer's comment or complaint.

3. **What Bayer Does Not Teach**

Bayer does not teach either automatically or promptly creating and transmitting a message to an employee in response to either receiving or storing customer feedback.

Bayer does not teach receiving a customer satisfaction rating.

Bayer does not teach or suggest promptly transmitting a notification message to an employee of an employer upon receipt of said customer feedback message . . . and displaying to said employee said customer feedback message within a web page displayed by said web browser as defined in claim 22. Bayer discloses transmission of a message, but not the transmission of a notification message.

Bayer does not teach either providing a link on a web page enabling an employee to retrieve a customer feedback message or providing a link on a web page so an employee can play an audio file.

4. **Bayer does not Disclose the “automatically creating and transmitting an electronic notification message to a first employee of an employer, said electronic notification message providing an indication that a feedback message exists, said automatically creating and transmitting occurring in response to at least one of said receiving and said automatically storing” Limitations Defined by Independent Claim 1**

In support of the rejection of claim 1 under 35 USC 102(e) as being anticipated by Bayer, the examiner stated that Bayer discloses:

automatically creating and transmitting an electronic notification message to a first employee of an employer, said electronic notification message providing an indication that a feedback message exists, said automatically creating and transmitting occurring in response to at least one of said receiving and said automatically storing (§§ 69-73 - Feedback is analyzed and forwarded to an appropriate service provider representative (which is an example of a first employee of an employer), in light of the nature, severity, and/or frequency of the given type of feedback. ¶ 76 discloses that reports of aggregated feedback may be forwarded to a representative of the service provider, e.g., to a travel manager, which is another example of a first employee of an employer); [Office action mailed November 2, 2005 page 3 lines 5-14.]

Bayer teaches that customer service controller 102 receives feedback information at 710 and stores it in feedback database 600 and analyzes the information in two separate steps. The first step in the analysis is to determine if the traveler provided a separate comment or complaint, or requested a response from the service provider. See, for example, Bayer paragraphs 70 and 71, which state that:

Referring now to FIG. 8, a flow diagram is depicted showing a more detailed complaint or comment resolution process according to one embodiment of the present invention. This process begins after receipt of feedback information from a traveler (which feedback information is generated and transmitted as discussed above in conjunction with FIG. 7). Feedback information is reviewed at 802. This review includes, for example, determining whether any particular complaint or comment was provided by the traveler in the feedback. For example, in embodiments where Web-based forms (such as the forms depicted in FIGS. 9A-E) are used, this review may include determining whether a separate comment or complaint was included in the text entry box. If the traveler provided no separate comment or complaint, or did not specifically ask for a response from the

service provider, processing continues to 816 where reports may be generated (discussed further below).

[0071] If the traveler provided a separate comment or complaint, or specifically asked for a response from the service provider, processing continues to 806 where a determination is made whether customer service controller 102 (or an agent thereof) should contact the service provider.

If the traveler has **not** provided a separate comment or complaint, or requested a response from the service provider, processing continues to report generation 816. If the traveler has provided a separate comment or complaint, or requested a response from the service provider, Bayer then analyzes the “severity” of the complaint to determine whether or not to contact the service provider. Bayer paragraphs 68 and 69. If the analysis indicates that the complaint is not sufficiently severe to warrant contacting the service provider, Bayer teaches that a message is electronically sent to the customer at 808. If the complaint is sufficiently severe, the information is sent to the service provider. Bayer paragraph 72. However, in view of the two analyses described above, Bayer does not teach **automatically** creating and transmitting a message to an employee in response to either receiving or storing customer feedback, as defined in claim 1.

Specifically in the office action mailed November 2, 2005, the examiner relied upon Bayer paragraphs 69-73 to show that the feedback is analyzed and based on the nature of the feedback, the feedback is forwarded to an “employee.” The examiner also relied upon paragraph 76 to show that reports of aggregated feedback may be sent to an employee.

In response, the applicant points out that the notification in Bayer is not created and transmitted automatically. The subject application discloses that “automatic” refers to the immediacy of the electronic notification message. For example:

Therefore, a need exists for a system and method that provides a **nearly immediate** notification of customer complaints to the appropriate company employees. [Specification page 2 lines 17-18; emphasis supplied.]

* * *

It is therefore an object of an embodiment of the present invention to provide **real-time** notification to company employees of customer complaints. [Specification page 2 lines 22-23; emphasis supplied.]

Bayer paragraph 69 discloses:

Upon receipt of the feedback information, customer service controller 102 analyzes the feedback information at 712.

Bayer's disclosure of two intervening levels of analyzing proves that Bayer does not forward the feedback information automatically. Bayer discloses at paragraph 73, with emphasis supplied, that **eventually**, Bayer forwards the feedback information:

If customer service controller 102 **determines** that there is a need to contact a service provider about a particular complaint, comment, or group of complaints or comments, **processing continues** at 810 where the information is forwarded to the service provider.

The examiner also asserted that paragraph 76 in Bayer discloses reports of aggregated feedback to be forwarded to a representative of a service provider. Paragraph 76 states, in pertinent part that:

Processing continues at 816 where periodic reports are generated by customer service controller 102. These reports may be generated automatically or upon request, and may include summaries of data and data from the aggregated feedback received by travelers using the system. The data may be broken down in a wide variety of ways (e.g., by service provider, by traveler, by travel organization, etc.). Customer service controller 102 may automatically schedule specific queries of the stored data to produce reports which can be sent to travel

managers (e.g., average rating per supplier, worst/best hotel, worst/best car rental location, etc.).

The applicant points out that report generation 816 occurs **after** review feedback information 802 (Bayer Fig. 8), therefore, the applicant's argument that the two reviews precluding the disclosure of an automatic notification also applies to report generation 816. Moreover, this passage discloses periodically querying the stored data to produce reports, so the passage could not disclose "automatically creating and transmitting . . . in response to automatically storing [said feedback message from said customer feedback message]", as recited in claim 1. Since there is an aggregation of the feedback messages from the consumers, the response is not directed **automatically** at a specific feedback message as defined in claim 1. Furthermore, the automatic scheduling of specific queries disclosed in Bayer is not done in response to either receiving or storing a feedback message from a customer, as defined in claim 1.

For the reasons presented above, the rejections of claim 1 and claims 2-7 and 32 which depend therefrom, are improper and should be reversed.

5. Bayer does not Disclose Receiving from a Customer a Customer Feedback Message Including a Customer Satisfaction Rating, as Defined in Claim 3

In support of the rejection of claim 3 under 35 USC 102(e) as being anticipated by Bayer, the examiner stated that Bayer discloses:

wherein said receiving includes receiving a customer satisfaction rating (¶ 71 - The severity, frequency, and/or nature of a customer's comment or complaint is assessed. This type of feedback is indicative of a customer satisfaction rating); [Office action mailed November 2, 2005 page 3 lines 18-21.]

In response, the applicant submits that the examiner's assertion is incorrect because Bayer

does not disclose “receiving a customer satisfaction rating,” as recited in claim 3. Instead, Bayer discloses receiving customer feedback and determining the severity or nature of the customer’s comment or complaint.

Specifically in the office action mailed November 2, 2005, the examiner relied upon Bayer paragraph 71, which states in pertinent part that:

If the traveler provided a separate comment or complaint, or specifically asked for a response from the service provider, processing continues to 806 where a determination is made whether customer service controller 102 (or an agent thereof) should contact the service provider. This may involve, for example, determining the severity or nature of the traveler's comment or complaint. The system may determine that certain types of comments or complaints need not require direct contact with the service provider on an individual traveler basis, but may require direct contact when there are a certain number of reoccurrences of the same complaint (e.g., an individual traveler's complaint that an airline was delayed may not warrant contact with the service provider; however, if nine out of ten travelers complain about that particular airlines delays may warrant contact with that airline).

In response, the applicant points out that Bayer discloses receiving from the customer a comment or complaint. Bayer paragraph 71, second sentence. Bayer discloses that at processing step 806, customer service controller 102 **determines** the severity or nature of the customer’s comment or complaint. Based on customer service controller 102's assessment, customer service controller decides whether or not to contact the service provider. Since Bayer discloses the step of service controller 102 determining the severity, frequency, or nature of the comment or complaint, Bayer could not have received from a customer a customer feedback message including a customer satisfaction rating. Therefore, Bayer does not disclose receiving from a customer a customer feedback message including a customer satisfaction rating, as defined in claim 3.

For the reason presented above, the rejections of claim 3 and claims 4-6 which depend therefrom, are improper and should be reversed.

6. **Bayer does not Disclose “a computer server for promptly transmitting said electronic notification message to an employee of an employer upon receipt of said customer feedback message” as Defined by Independent Claim 17**

In support of the rejection of claim 17 under 35 USC 102(e) as being anticipated by Bayer, the examiner stated that:

Claims 17-18 recite limitations already addressed by the rejection of claims 1-4 and 7 above; therefore, the same rejection applies. [Office action mailed November 2, 2005 page 4 lines 7-8.]

In response, the applicant submits that the reasons presented in response to the rejection of claim 1 above, apply to the rejection of claim 17. This takes into account claim 17 defining promptly transmitting a message to an employee upon receipt of a customer feedback message, while claim 1 defines automatically transmitting a message to an employee in response to either receiving or automatically storing a customer feedback message. Therefore, rejections of claim 17 and claims 18 and 19 which that depend therefrom, are improper and should be reversed.

7. **Bayer does not Disclose “automatically creating and transmitting an electronic notification message to a first employee of an employer, said electronic notification message providing an indication that a feedback message exists, said automatically creating and transmitting occurring in response to at least one of said receiving and said automatically storing” as Defined by Independent Claim 33**

In support of the rejection of claim 33 under 35 USC 102(e) as being anticipated by Bayer, the examiner stated that:

Claim 33 recites limitations already addressed by the rejection of claims 1-4 and 7 above; therefore, the same rejection applies. [Office action mailed

November 2, 2005 page 4 lines 9-10.]

In response, the applicant submits that for the reasons presented in response to the rejection of claim 1 above, the rejection of independent claim 33 is improper and should be reversed.

8. Bayer does not Teach or Suggest Any of the Limitations Defined by Claims 5 and 6

As discussed above, Bayer does not teach or suggest “receiving a customer satisfaction rating [from a customer],” as recited in claim 3. Therefore, Bayer does not teach or suggest either “determining whether [a] customer satisfaction rating [received from a customer] is below a threshold value” or “transmitting a second electronic notification message to a second employee of said employer if [a] customer satisfaction rating [received from a customer] is below [or above] said threshold value, said second electronic notification message providing an indication that a feedback message exists,” as recited in claims 5 and 6. Therefore, the rejections of claims 5 and 6 are improper and should be reversed.

9. Bayer does not Teach or Suggest “receiving a satisfaction rating from said customer” as Defined by Claims 12-14

In support of the rejection of claims 12-14 under 35 USC 103(a) as being obvious in view of Bayer, the examiner stated that:

Claims 12-14 recite limitations already addressed by the rejection of claims 5 and 6 above; therefore, the same rejection applies. Furthermore, Bayer teaches that the second notification message (e.g., the notifications requesting direct customer service contact with customers) may be sent via e-mail. [Office action mailed November 2, 2005 page 10 lines 8-11.]

In response, the applicant submits that for the reasons presented in response to the

rejection of claim 3 above, Bayer does not teach or suggest “receiving a satisfaction rating from said customer,” as recited in claims 12 and 13. Moreover, since Bayer does not teach or suggest “receiving a satisfaction rating from said customer,” Bayer does not teach or suggest “determining whether said satisfaction rating is below [or above] a threshold value” or “transmitting a second electronic notification message to a second employee of said employer if said satisfaction rating is below said threshold value, said electronic notification message indicating that a certain feedback message has been received,” as recited in claims 12 and 13. Therefore, the rejections of claims 12 and 13, and claim 14, which depends from claim 12, are improper and should be reversed.

10. Bayer does not Teach or Suggest Limitations Defined by Claim 15

In support of the rejection of claim 15 under 35 USC 103(a) as being obvious in view of Bayer, the examiner stated that:

Claims 15-16 recite limitations already addressed by the rejection of claims 1-14 and 32 above; therefore, the same rejection applies. [Office action mailed November 2, 2005 page 10 lines 12-13.]

a. “Receiving a satisfaction rating from a customer”

As discussed above, Bayer does not teach or suggest “receiving a satisfaction rating from a customer,” as recited in claim 15.

b. “Generating an electronic notification message, said electronic notification message indicating at least the existence of a satisfaction rating of a customer, said generating occurring automatically at least in part in response the receipt and storage of at least one of said satisfaction rating and said spoken message”

Bayer does not teach or suggest “generating an electronic notification message, said

electronic notification message indicating at least the existence of a satisfaction rating of a customer, said generating occurring automatically at least in part in response the receipt and storage of at least one of said satisfaction rating and said spoken message” as recited in claim 15.

Bayer teaches or suggests notifying personnel of customer messages in two instances. The first is regarding customer feedback based on the severity or nature of the feedback, or when there are a certain number of reoccurrences of the same complaint. Bayer paragraphs 71 and 73. Bayer also teaches or suggests scheduling “specific queries of the stored data to produce reports which can be sent to travel managers (e.g., average rating per supplier, worst/best hotel, worst/best car rental location, etc.).” Bayer paragraph 76.

Neither of these notifications to travel service personnel involve receipt of a satisfaction rating from a customer. Bayer teaches or suggests that the customer provides complaints and comments. Bayer does not teach or suggest that the customer **provides** a satisfaction rating. Therefore, Bayer does not teach or suggest acting **in response to** the receipt and storage of a customer satisfaction rating.

Bayer teaches or suggests that **periodic** queries of stored data **produce** ratings of the performance of travel providers. However, Bayer’s notification to travel service providers based on these ratings is not generated **automatically**, nor is it generated **in response to the receipt and storage of a satisfaction rating from a customer**. Therefore, Bayer does not teach or suggest “generating an electronic notification message, said electronic notification message indicating at least the existence of a satisfaction rating of a customer, said generating occurring automatically at least in part in response the receipt and storage of at least one of said satisfaction rating and said spoken message,” as recited in claim 15.

c. **“Attaching said audio file to said notification message”**

As Bayer does not teach or suggest “generating an electronic notification message, said electronic notification message indicating at least the existence of a satisfaction rating of a customer, said generating occurring automatically at least in part in response the receipt and storage of at least one of said satisfaction rating and said spoken message,” Bayer does not teach or suggest “attaching said audio file to said notification message,” as recited in claim 15.

- d. **“Automatically transmitting said electronic notification message to an employee of an employer, said automatically transmitting occurring at least in part in response to said generating”**

As Bayer does not teach or suggest “generating an electronic notification message, said electronic notification message indicating at least the existence of a satisfaction rating of a customer, said generating occurring automatically at least in part in response the receipt and storage of at least one of said satisfaction rating and said spoken message,” Bayer does not teach or suggest “automatically transmitting said electronic notification message to an employee of an employer, said automatically transmitting occurring at least in part in response to said generating,” as recited in claim 15.

- e. **“Determining whether said satisfaction rating is below a threshold value”**

As Bayer does not teach or suggest “receiving a satisfaction rating from a customer,” Bayer does not teach or suggest “determining whether said satisfaction rating is below a threshold value,” as recited in claim 15.

- f. **“Transmitting a second electronic notification message to a second employee of said employer if said satisfaction rating is below said threshold value, said second electronic notification message indicating at least the existence of a satisfaction rating of a customer”**

As Bayer does not teach or suggest “generating an electronic notification message, said electronic notification message indicating at least the existence of a satisfaction rating of a customer, said generating occurring automatically at least in part in response the receipt and storage of at least one of said satisfaction rating and said spoken message,” Bayer does not teach or suggest “transmitting a second electronic notification message to a second employee of said employer if said satisfaction rating is below said threshold value, said second electronic

notification message indicating at least the existence of a satisfaction rating of a customer,” as recited in claim 15.

For the reasons presented above, the rejections of claim 15 and claim 16, which depends therefrom, are improper and should be reversed.

11. **Bayer does not Teach or Suggest “a computer server for promptly transmitting said notification message to an employee in response to receipt of said customer feedback message” as Defined by Claim 20**

For the same reasons applicable to claim 17, Bayer does not teach or suggest “a computer server for **promptly** transmitting said notification message to an employee in response to said customer feedback message,” as recited in claim 20, with emphasis supplied. Therefore, the rejections of claim 20, and claim 21 which depends therefrom, are improper and should be reversed.

12. **Bayer does not Teach or Suggest the “promptly transmitting said notification message to an employee of an employer upon receipt of said customer feedback message” and “displaying to said employee said customer feedback message within a web page displayed by said web browser” Limitations Defined by Claim 22**

As discussed above, Bayer does not teach or suggest “promptly transmitting said notification message to an employee of an employer upon receipt of said customer feedback message,” as recited in claim 22.

Moreover, Bayer does not teach or suggest “displaying to said employee said customer feedback message within a web page displayed by said web browser,” as recited in claim 22. In paragraph 79, Bayer teaches or suggests posting feedback from travelers on a website for viewing by other **travelers**, stating that:

In other embodiments, feedback received from travelers may be “posted” on a Web-site for viewing and further comment by other travelers.

This disclosure does not teach or suggest that a **travel** service employee who allegedly receives the promptly transmitted notification of receipt of the customer feedback message is able to view the message within a web page. In the office action mailed November 2, 2005 at page 10 line 20 through page 11 lines 12 the examiner attempted to make up for this deficiency in Bayer and stated that:

Furthermore, regarding claims 22 and 27, Bayer does not expressly teach that an employee may use a web server to retrieve and view the customer feedback message on a browser. . . . In other words, Bayer's invention clearly lays forth the groundwork, including the apparatus and functionality, for permitting an employee (as opposed to a customer) to view the feedback on a web browser; therefore, the Examiner submits that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to adapt Bayer to allow a service provider's employees to use a web server to retrieve and view the customer feedback message on a browser in order to facilitate global access to the feedback, which is a well-known advantage that arises from posting data on the Internet.

The examiner attempted to overcome her admission "Bayer does not expressly teach that an employee may use a web server to retrieve and view the customer feedback message on a browser" by arguing that Bayer "lays forth the groundwork, including the apparatus and functionality, for permitting an employee (as opposed to a customer) to view the feedback on a web browser" and that it would have been obvious.

The examiner's argument is conclusory because the capacity to post customer feedback to a website for viewing by a customer, does not make obvious to post customer feedback to a website for viewing by a employee. Moreover, the examiner's argument relies on impermissible hindsight. See In re Deminski, which states that:

The mere fact that the prior art could be modified so as to result in the claimed inventions would not have made the claims obvious, absent some teaching in the prior art motivating the modification of the prior art. In re Deminski, 796 F.2d 436, 230 USPQ 3113 (Fed. Cir. 1986).

See also In re Rouffet, which states that:

As this court has stated, “virtually all [inventions] are combinations of old elements.” Environmental Designs, Ltd. v. Union Oil Co., 713 F.2d 693, 698, 218 USPQ 865, 870 (Fed. Cir. 1983); see also Richdel, Inc. v. Sunspool Corp., 714 F.2d 1573, 1579-80, 219 USPQ 8, 12 (Fed. Cir. 1983) (“Most, if not all, inventions are combinations and mostly of old elements.”). Therefore an examiner may often find every element of a claimed invention in the prior art. If identification of each claimed element in the prior art were sufficient to negate patentability, very few patents would ever issue. Furthermore, rejecting patents solely by finding prior art corollaries for the claimed elements would permit an examiner to use the claimed invention itself as a blueprint for piecing together elements in the prior art to defeat the patentability of the claimed invention. Such an approach would be “an illogical and inappropriate process by which to determine patentability.” Sensonics, Inc. v. Aerosonic Corp., 81 F.3d 1566, 1570, 38 USPQ2d 1551, 1554 (Fed. Cir. 1996).

To prevent the use of hindsight based on the invention to defeat patentability of the invention, this court requires the examiner to show a motivation to combine the references that create the case of obviousness. In other words, the examiner must show reasons that the skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would select the elements from the cited prior art references for combination in the manner claimed. [In re Rouffet, ___ F.3d ___, ___, ___ USPQ2d ___, ___ (Fed. Cir. July 15, 1998).]

The examiner's stated motivation for modifying the disclosure in Bayer is "to facilitate global access to audio feedback." This motivation is too broad and general to modify the teachings of Bayer. Without a proper motivation to modify the prior art, as stated above in Sensonics, Inc. v. Aerosonic Corp., the examiner is:

rejecting patents solely by finding prior art corollaries for the claimed elements [which] would permit an examiner to use the claimed invention itself as a blueprint for piecing together elements in the prior art to defeat the patentability of the claimed invention. Such an approach would be "an illogical and inappropriate process by which to determine patentability."

Since the examiner has not shown a proper motivation to modify the prior art, the examiner has not shown that "it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to adapt Bayer to allow a service provider's employees to use a web server to retrieve and view the customer feedback message on a browser," as asserted by the examiner.

Moreover, Bayer does not teach or suggest the sequence of a notification message and then the transmission of the message, disclosed by the limitations "promptly transmitting said notification message to an employee of an employer upon receipt of said customer feedback message . . . and displaying to said employee said customer feedback message within a web page displayed by said web browser," as recited in claim 22. Bayer only teaches or suggests a transmission of a message, but not the transmission of a **notification** message. The applicant has liberally interpreted Bayer's transmission of a message to be **either** a notification message or a transmission of a message. However, Bayer does not teach or suggest **both** a notification message **and** a transmission of a message, as recited in claim 22.

For the reasons presented above, the rejections of claim 22 and claims 23-27, which depend therefrom, are improper and should be reversed.

13. **Bayer does not Teach or Suggest “providing a link on said web page enabling said employee to playback said audio file” as Defined by Claim 27**

In support of the rejection of claim 27 under 35 USC 103(a) as being obvious in view of Bayer, the examiner stated that:

Furthermore, regarding claims 22 and 27, Bayer does not expressly teach that an employee may use a web server to retrieve and view the customer feedback message on a browser, including a link of the web page to enable playback of an audio file. However, Bayer does state that "feedback received from travelers may be 'posted' on a Web-site for viewing and further comment by other travelers" (§ 79). In other words, Bayer's invention clearly lays forth the groundwork, including the apparatus and functionality, for permitting an employee (as opposed to a customer) to view the feedback on a web browser; therefore, the Examiner submits that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to adapt Bayer to allow a service provider's employees to use a web server to retrieve and view the customer feedback message on a browser in order to facilitate global access to the feedback, which is a well-known advantage that arises from posting data on the Internet. Furthermore, Official Notice is taken that it is old and well-known in the art of information distribution to make audio files available on the Internet using a link to a web page. This also facilitates global access to audio files. Therefore, the Examiner further submits that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to allow a service provider's employees to use a web server to retrieve and view the customer feedback message on a browser, including a link of the web page to enable playback of an audio file, in order to facilitate global access to audio feedback. [Office action mailed November 2, 2005 page 10 line 20 through page 11 line 19.]

The examiner's argument, based on the examiner's conclusions regarding obviousness and official notice, does not teach or suggest "providing a link to a web page enabling said employee to playback said audio file," as recited in claim 27. Specifically, the examiner took official notice that it would have been obvious to make audio files available on the Internet using a link to a web page.

The applicant submits that the examiner's reasoning for taking official notice is flawed, and that noticing that it is old and well known in the art: "to make audio files available on the Internet using a link to a web page" is not an appropriate circumstance for reliance upon official notice. In addressing this topic, MPEP 2144.03(A) states that:

Official notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known. As noted by the court in In re Ahlert, 424 F.2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970), the notice of facts beyond the record which may be taken by the examiner must be "capable of such instant and unquestionable demonstration as to defy dispute" (citing In re Knapp Monarch Co., 296 F.2d 230, 132 USPQ 6 (CCPA 1961)).

By taking official notice, the examiner asserts that certain facts are well-known or are common knowledge in the art and are capable of instant and unquestionable demonstration. The applicant disputes the examiner's assertion because these facts are not capable of instant and unquestionable demonstration as being well-known.

Furthermore, the examiner's conclusion does not address the feasibility of making audio files available on the Internet using a link to a web page with respect to associated technological issues, such as the quality of the playback of the audio file on the web page and whether the systems have the capacity to timely transmit and/or receive the audio information. Therefore, the rejection of claim 27 relying upon official notice is improper and should be reversed.

14. **Bayer does not Teach or Suggest “a message server for serving an electronic notification message indicating that a complaint has been received, said message server configured to automatically serve said electronic notification message to an employee of an employer promptly upon receipt of said customer complaint; a web server connected with said database, said web server configured to enable said employee to access said database to retrieve said complaint record” as Defined by Claim 28**

As discussed above, Bayer does not teach or suggest “serve said electronic notification message to an employee of an employer promptly upon receipt of said customer complaint,” as recited in claim 28.

Therefore, Bayer also does not teach or suggest “a web server connected with said database, said web server configured to enable said employee to access said database to retrieve said complaint record” as defined by claim 28.

Therefore, the rejections of claims 28 and claims 29-31, which depends therefrom, are improper and should be reversed.

H. 37 CFR 41.37 (c)(1)(viii) Claims Appendix

Appendix I is attached which contains a copy of the claims involved in the appeal.

I. 37 CFR 41.37 (c)(1)(ix) Evidence Appendix

No evidence was submitted pursuant to 1.130, 1.131, or 1.132 of this title or any other evidence entered by the examiner and relied upon by appellant in the appeal. Accordingly, this section is inapplicable.

J. 37 CFR 41.37 (c)(1)(x) Related Proceedings Appendix

There are no related appeals or interferences under (c)(1)(ii) of this section. Accordingly, this section is inapplicable.

IV. **37 CFR 41.37 (c)(2)**

This brief does not include any new or non-admitted amendment, or any new or non-admitted affidavit or other evidence.

V. **37 CFR 41.37 (d)**

This appeal brief complies with all the requirements of paragraph (c) of this section.

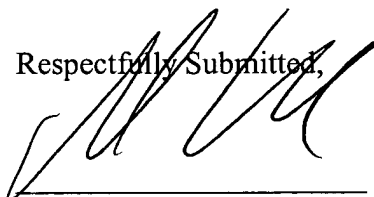
VI. **37 CFR 41.37 (e)**

No extension of time is required.

2/2/06

DATE

Respectfully Submitted,



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Registration No. 35,299

Attorney of Record

DHS/BTM/DHS/RAN

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Appendix I

1. An electronic network implemented method for notifying personnel of customer feedback messages, comprising:

receiving from a customer a customer feedback message in an electronic format;
automatically storing said feedback message from said customer in a database in response to receipt of said customer feedback message in said electronic format;

and

automatically creating and transmitting an electronic notification message to a first employee of an employer, said electronic notification message providing an indication that a feedback message exists, said automatically creating and transmitting occurring in response to at least one of said receiving and said automatically storing.

2. The method of claim 1 wherein said transmitting comprises transmitting said electronic notification message via e-mail.

3. The method of claim 1 wherein said receiving includes receiving a customer satisfaction rating.

4. The method of claim 3 wherein said electronic notification message includes said customer satisfaction rating.

5. The method of claim 3 further comprising:

determining whether said customer satisfaction rating is below a threshold value; and
transmitting a second electronic notification message to a second employee of said employer if said customer satisfaction rating is below said threshold value, said second electronic notification message providing an indication that a feedback message exists.

6. The method of claim 3 further comprising:

determining whether said customer satisfaction rating is above a threshold value; and
transmitting a second electronic notification message to a second employee if said customer satisfaction rating is above said threshold value, said second electronic notification message providing an indication that a feedback message exists.

7. The method of claim 1

wherein said customer feedback message in said electronic format comprises an audio file

including a spoken message provided by said customer.

8. An electronic network implemented method for notifying personnel of customer feedback messages, comprising:

receiving a spoken customer feedback message from a customer;

creating an audio file containing a recording of said spoken customer feedback message;

storing said audio file in a database;

generating an electronic notification message, said electronic notification message

indicating that a certain feedback message has been received;

transmitting said electronic notification message to an employee of an employer; and

accessing said database and playing said audio file containing a recording of said spoken feedback message stored in said database to said employee, upon receiving a command from said employee.

9. The method of claim 8 wherein said transmitting comprises transmitting said electronic notification message via e-mail.

10. The method of claim 8 further comprising assigning a response ID to said customer feedback message.

11. The method of claim 10 wherein said command from said employee comprises said response ID.

12. The method of claim 8 further comprising:

receiving a satisfaction rating from said customer;

determining whether said satisfaction rating is below a threshold value; and

transmitting a second electronic notification message to a second employee of said employer if said satisfaction rating is below said threshold value, said electronic notification message indicating that a certain feedback message has been received.

13. The method of claim 8 further comprising:

receiving a satisfaction rating from said customer;

determining whether said satisfaction rating is above a threshold value; and

transmitting a second electronic notification message to a second employee of said employer if said satisfaction rating is above said threshold value, said electronic notification

message indicating that a certain feedback message has been received.

14. The method of claim 12 wherein said transmitting comprises transmitting said second electronic notification message via e-mail.

15. An electronic network implemented method for notifying personnel of customer messages, comprising:

- receiving a satisfaction rating from a customer;

- receiving a spoken message from said customer;

- creating an audio file containing a recording of said spoken message;

- storing said audio file in a database;

- generating an electronic notification message, said electronic notification message indicating at least the existence of a satisfaction rating of a customer, said generating occurring automatically at least in part in response the receipt and storage of at least one of said satisfaction rating and said spoken message;

- attaching said audio file to said notification message;

- automatically transmitting said electronic notification message to an employee of an employer, said automatically transmitting occurring at least in part in response to said generating;

- determining whether said satisfaction rating is below a threshold value;

- and

- transmitting a second electronic notification message to a second employee of said employer if said satisfaction rating is below said threshold value, said second electronic notification message indicating at least the existence of a satisfaction rating of a customer.

16. The method of claim 15 wherein said automatically transmitting comprises transmitting via email second electronic notification message is an e-mail message.

17. A customer feedback notification electronic system, comprising:

- a database for storing a customer feedback message of a customer;

- an electronic notification message, said electronic notification message indicating that a customer feedback message has been received; and

- a computer server for promptly transmitting said electronic notification message to an employee of an employer upon receipt of said customer feedback message.

18. The system of claim 17 further comprising an email server for transmitting said electronic notification message via e-mail.

19. The system of claim 17 further comprising:

a voice server for receiving spoken messages from customers and converting said spoken messages to audio files; and

programmed instructions for attaching
said audio file to said notification message before transmitting said notification message to said employee.

20. A customer feedback notification electronic system, comprising:

a voice server for receiving a spoken customer feedback message;
a database for storing said feedback message in an audio file;
an electronic notification message indicating that said feedback message has been received, said electronic notification message including said audio file; and

a computer server for promptly transmitting said notification message to an employee in response to receipt of said customer feedback message.

21. The system of claim 20 wherein said computer server transmits said notification message via email.

22. An electronic network implemented method for receiving and tracking customer feedback messages, comprising:

receiving a customer feedback message of a customer;
storing said customer feedback message in a database;
creating an electronic notification message indicating that a customer feedback message has been received from an individual customer;

promptly transmitting said notification message to an employee of an employer upon receipt of said customer feedback message;

accessing said database using a web server to retrieve said customer feedback message to a web browser; and

displaying to said employee said customer feedback message within a web page displayed by said web browser.

23. The method of claim 22 wherein said transmitting said notification message comprises transmitting an email.
24. The method of claim 22 wherein said step of receiving said feedback message includes receiving a customer satisfaction rating from said customer.
25. The method of claim 24 wherein information in said notification message includes said customer satisfaction rating.
26. The method of claim 24 comprising the further steps of:
determining whether said customer satisfaction rating is below a threshold value; and
transmitting a second electronic notification message to a second employee if said customer satisfaction rating is below said threshold value.
27. The method of claim 22 comprising the further steps of:
creating an audio file containing said customer feedback message;
storing said audio file in said database; and
providing a link on said web page enabling said employee to playback said audio file.
28. A system for receiving and tracking customer complaints, comprising:
a voice server for receiving a customer complaint;
a database for storing said complaint in a complaint record;
a message server for serving an electronic notification message indicating that a complaint has been received, said message server configured to automatically serve said electronic notification message to an employee of an employer promptly upon receipt of said customer complaint;
a web server connected with said database, said web server configured to enable said employee to access said database to retrieve said complaint record.
29. The system of claim 28 wherein said message server is configured to transmit electronic notification messages via email.
30. The system of claim 28 further comprising:
an audio file containing a recording of a spoken customer complaint;
wherein said complaint record includes said audio file.
31. The system of claim 30 further comprising a mechanism to attach said audio file to said

electronic notification message.

32. The method of claim 7 wherein said electronic notification message includes said audio file.

33. A computer program product comprising a computer readable media storing code for enabling an electronic network to implement a method for notifying personnel of customer feedback messages, said method comprising:

receiving from a customer a customer feedback message in an electronic format;
automatically storing said feedback message from said customer in a database in response to receipt of said customer feedback message in said electronic format; and
automatically creating and transmitting an electronic notification message to a first employee of an employer, said electronic notification message providing an indication that a feedback message exists, said automatically creating and transmitting occurring in response to at least one of said receiving and said automatically storing.

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